



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 26 2016

REPLY TO THE ATTENTION OF:
E-19J

Jamie MacAlister
Environmental Review Manager
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, Minnesota 55101

Re: U.S. EPA Scoping Comments for North Dakota Pipeline Company LLC's Sandpiper Pipeline Project Environmental Impact Statement.

Dear Ms. MacAlister:

This letter with enclosure provide EPA's scoping comments for your consideration as the Minnesota Department of Commerce (MDOC) prepares the state environmental impact statement (EIS) for the above referenced Sandpiper Pipeline Project in Minnesota.

Given the potential environmental impacts, and level of public and tribal interest, we appreciate the opportunity to comment on the scope of MDOC's EIS. We look forward to reviewing the Draft EIS (DEIS). Please send EPA one paper copy and five CDs of the DEIS when MDOC makes it available for public review and comment.

If you have any questions or wish to discuss our comments please contact me by phone: 312/886-2901 or email: westlake.kennth@epa.gov, or Virginia Laszewski of my staff by phone: 312/886-7501 or email: laszewski.virginia@epa.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kenneth A. Westlake", is written over a horizontal line.

Kenneth A. Westlake, Chief
NEPA Implementation Section
Office of Enforcement and Compliance Assurance

Enclosure: 1

cc: Scott Ek, Energy Facilities Planner, Minnesota Public Utilities Commission,
Scott.ek@state.mn.us
Chad Konickson, Chief, Regulatory Branch, U.S. Army Corps of Engineers,
St. Paul District, MN, chad.konickson@usace.army.mil
Peter Fasbender, U.S. Fish and Wildlife Service, peter_fasbender@fws.gov

Darla Lenz, Forest Supervisor, Chippewa National Forest, U.S. Forest Service, 200 Ash Avenue NW, Cass Lake, Minnesota 56633
Jamie Schrenzel, Minnesota Department of Natural Resources (MnDNR),
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Steven Clark, Co-Chair, White Earth Band of Minnesota Chippewa,
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Ben Callan, Bureau of Environmental Analysis and Sustainability, Wisconsin
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53703

**U.S. EPA Scoping Comments to Minnesota Department of Commerce/Public
Utility Commission Concerning North Dakota Pipeline Company LLC's
Sandpiper Pipeline Project**

EPA reviewed Minnesota Department of Commerce (MDOC) Environmental Assessment Worksheet / Draft Scoping Decision Document (EAW/DSDD) for the Sandpiper Pipeline Project, dated April 8, 2016. EPA generally agrees with the type and level of information and analysis MDOC proposes for the state environmental impact statement (EIS).

In addition, EPA offers the following scoping comments for MDOC consideration when preparing the EIS documentation for the portion of North Dakota Pipeline Company LLC's (NDPC) Sandpiper Pipeline Project (SPP) located in Minnesota.

Description of NDPC Proposed Project and Connected Actions – The EAW/DSDD discloses that NDPC proposes to construct and operate the SPP. SPP is a proposed new 612-mile underground crude oil (light sweet Bakken crude) pipeline extending from Beaver Lodge Station, south of Tioga, North Dakota, to a new terminal facility at Clearbrook, Minnesota, and then on to an Enbridge Energy, LLC affiliate's terminal and tank farm in Superior, Wisconsin. The proposed project includes approximately 303 miles of new pipeline in Minnesota. As proposed, the project will use a 24-inch-diameter pipeline (average capacity of 225,000 barrels per day [bpd]) from North Dakota to Clearbrook and a 30-inch-diameter pipeline (average capacity of 375,000 bpd) from Clearbrook to the Wisconsin terminal. Approximately 227 miles of NDPC proposed pipeline route would generally be within 250-feet from the centerline of a known utility (e.g., transmission line, pipeline).

The SPP also includes: 1) construction of a new oil terminal with two 150,000 barrel breakout tanks and a pump station (Clearbrook West), approximately 3.8 miles west of the existing Enbridge Clearbrook Terminal, and 2) a pipeline inspection gauge (PIG) launcher and receiver types and mainline valve facilities at Pine River, Minnesota.

Recommendation: If the proposed new pump stations require the construction and operation of new transmission lines in order to operate, then we recommend the new transmission line projects be assessed (e.g., alternative routes, impacts, mitigation) as connected actions in the SPP EIS.

EAW, page 28, **Modifications to Existing Equipment** states: *Once SPP is placed in service, the existing interconnection between NDPC's Line 81 and the Enbridge Mainline System at the existing Clearbrook Terminal would be terminated and all Line 81 volumes intended for delivery to Superior, Wisconsin, would be transported via SPP, rather than via the Enbridge Mainline System.*

Recommendation: EPA recommends the DEIS identify the method that is currently used to deliver Line 81 product volumes to Superior, Wisconsin from the Clearbrook Terminal. For example, are one or more pipelines used? If yes, identify each pipeline, pipeline owner,

pipeline route, age, condition and capacity. Discuss the proposed fate of each pipeline if transport of Line 81 volume is discontinued.

Descriptions of Existing Right-of-Ways (ROW) in Minnesota - In order to fully assess potential impacts to the environment, it is important to understand the existing condition/s and contents of the pipeline and other utility corridors/right-of-ways (ROWs) that may be used to co-locate/about all or portions of the SPP.

Recommendation: EPA recommends the EIS include a map/figure that shows the existing pipeline corridors/ROWs in Minnesota for: NDPC's Line 81, Minnesota Pipe Line Company, Enbridge Energy Main Line, and Viking Pipeline. Also provide a map/figure that shows other utility ROWs that may be used. We recommend the EIS describe each corridor/ROW. This might include, but need not be limited to, identifying the existing corridor/ROW width/s, the number and location of existing access roads, and the number, purpose, age and condition of all existing pipelines within the corridor/ROW. Identify connections between pipelines located within a corridor/ROW. Identify and discuss types and amounts of product/s transported by each pipeline and their maximum capacity. Include schedules/timelines for proposed abandonment and/or replacement of all existing corridor/ROW pipelines. Identify on maps and discuss in the text all known corridor/ROW pipeline leaks/spills and their cleanup status. In addition, we recommend the EIS identify whether any of the corridor/ROW owners implement vegetation management plans to control the growth and spread of noxious weeds and exotic species and identify the current status of invasive species within the existing corridor/ROWs.

Emergency Preparedness Measures/Safety

Recommendation: EPA recommends the EIS disclose and discuss the adequacy of specific measures NDPC has in place to identify and respond to pipeline leaks and emergencies along their ROW in Minnesota.

ALTERNATIVES

Sandpiper Pipeline Project and Line 3 Replacement Project – Alternative Sites and Alternative Routes

MDOC will prepare an EIS for each Project.

Recommendation: EPA recommends the MDOC DEISs identify and assess feasible alternative sites and routes located outside the Mississippi River headwaters area.

Forest and U.S. Forest Service Coordination

It is possible that one or more alternative Sandpiper Pipeline sites or routes not currently identified might cross National Forest land.

Recommendation: EPA recommends MDOC coordinate with the U.S. Forest Service concerning the Sandpiper Pipeline Project regarding any potential alternative sites or routes

within U.S. Forest Service lands. Discuss the results of that coordination in the DEIS.

Vegetation, Pollinators, Wildlife and Wildlife Habitat

Recommendations: We recommend the DEIS evaluate and disclose the effects the alternatives will have on area ecology, including vegetation, pollinator species, wildlife and their habitats. Assess and disclose how these impacts will impact the general public and tribal recreational and subsistence hunting, fishing, harvesting and gathering activities/interests. We recommend a proposed mitigation plan with detailed mitigation steps that will be taken to minimize or eliminate adverse impacts be included in the DEIS.

Coordination with federal, state and tribal agencies

Recommendation: We recommend close and early coordination with the U.S. Fish and Wildlife Service (USFWS), U.S. Forest Service, State and tribal agencies on these and other wildlife-related issues. Include MDOC coordination efforts with USFWS and the Minnesota Department of Natural Resources (MnDNR) regarding federal and state-listed threatened or endangered species in the DEIS.

Vegetation Management Plan

Recommendations - As stated earlier, we recommend a vegetation management plan be prepared and included in the EIS to address, in part, control of plant intrusions. List the noxious and exotic plants that occur in the resource area. In cases where the weeds are a threat, EPA recommends the document detail a strategy for prevention, early detection of invasion, and control procedures for each species. Should an infestation occur or already be present, EPA supports integrated weed management (e.g., effective mix of education and prevention, biological, mechanical, chemical management, etc.). However, we encourage prioritization of management techniques that focus on non-chemical treatments first, with reliance on herbicides being the last resort in order to, in part, protect pollinator species. We recommend implementing yearly review and planning activity requirements for the above concerns, including evaluation of effectiveness to date. We also recommend the DEIS identify opportunities for Enbridge to revegetate using native plants that are pollinator species friendly when restoring the ROW after construction.

Historic, Archeological and Cultural Resources

Recommendation: We recommend the DEIS include/document MDOC's coordination with the Minnesota Historic Preservation Office (SHPO) as well as with all applicable tribes and Tribal Historic Preservation Offices (THPOs). This consultation might be documented, in part, by including copies of MDOC correspondence to and from the SHPO, tribes and/or THPOs and, if applicable, any signed Memoranda of Agreement.

Aquatic Resources / Wetlands and Streams

Recommendations: For the DEIS feasible alternative routes identified, we recommend the DEIS provide details on the existing condition and potential impacts to aquatic resources;

specifically: 1) baseline conditions of streams and wetlands proposed for impact, 2) any proposed functional losses to streams and wetlands due to the impact, 3) the widths of all proposed stream crossings, and) discussion on how these crossings will be accomplished (e.g., directional drilling, open trenching, coffer dams, etc.)

Clean Water Act (CWA), 404(b)(1) Guidelines - The SPP Scoping EAW (*Table 8 – Permits and Approvals*, page 34) identifies that a U.S. Army Corps of Engineers (Corps) Clean Water Act (CWA), Section 404 permit is required, a permit application has been submitted to the Corps, and is deemed complete by the Corps.

Recommendations: EPA recommends the DEIS:

- provide a level of information and analysis adequate to support compliance with the CWA, Section 404(b)(1) Guidelines;
- include direct, secondary and cumulative impacts analysis to aquatic resources;
- discuss and identify compensatory mitigation option/s for wetlands and streams;
- if mitigation banking is proposed as a compensatory mitigation option, provide details regarding the bank(s) (i.e. location, watershed, available credits and types of credits); and,
- identify and discuss anticipated timelines for permits (e.g., Corps Section 404 permit, etc.) as they relate to the DEIS timeline in the permit table and in the narrative after the permit table.

U.S. EPA, Region 5 Contacts for Clean Water Act Permits – Tribes

One or more of the following permits from U.S. EPA, Region 5 may be needed for any portion of the NDPC's Sandpiper Pipeline proposal and connected actions that would occur within the exterior boundaries of the Leech Lake, Fond du Lac, White Earth, Red Lake, and/or Mille Lacs Reservations:

- CWA Section 402 National Pollutant Discharge Elimination System (NPDES) discharge permit for discharges to waters of the U.S. from ground water pump out or process water associated with pipeline cleaning and/or hydrostatic pressure testing. For permit information, contact John Colletti, phone: 312/886-6106, email: colletti.john@epa.gov.
- CWA Section 402 NPDES construction stormwater permit. For permit information, contact Brian Bell, phone: 312/886-0981 email: bell.brianc@epa.gov.
- CWA Section 401 water quality certification (except for the Fond du Lac Reservation

whose tribal government provides its own Section 401 certification) for U.S. Army Corps of Engineers (Corps) CWA Section 404 wetland permits, water body crossings or discharge into waters of the U.S. For section 401 certification information, contact Janice Cheng, phone: 312/353-6424, email: cheng.janice@epa.gov.

Recommendation: EPA recommends MDOC include the CWA Section 402 permits and Section 401 certification contact information in the DEIS, including the permits table discussed previously. Please note that U.S. EPA CWA 402 discharge and stormwater permits, and Section 401 water quality certification only apply to the area within the exterior boundaries of a reservation. The Minnesota Pollution Control Agency implements Sections 401 and 402 for the remainder of the state.

Air Quality

Impacts to air quality can occur from construction, abandonment, modification, operation or maintenance of a petroleum products pipeline and associated facilities.

Recommendations: We recommend the DEIS identify and discuss the potential impacts to air quality from construction, abandonment, modification, operation and maintenance of the proposed project. Address and disclose the project's potential effect on: 1) all criteria pollutants under the National Ambient Air Quality Standards (NAAQS), including ozone; 2) any significant concentrations of hazardous air pollutants; and 3) protection of public health. Identify mitigation measures. Identify and discuss all air permits required and the permitting agency. We recommend the project proponents consider whether there may be opportunities to use clean diesel equipment, vehicles and fuels in construction and abandonment activities associated with the project and that MDOC identify and disclose any opportunities to utilize these measures in the DEIS.

Native American Tribal Coordination/Consultation

Recommendation: EPA recommends the DEIS identify, discuss and document MDOC's coordination/consultations with potentially affected tribes.

Environmental Justice

Recommendations: EPA recommends the DEIS consider whether a pipeline leak or spill that potentially affects wild rice and fish harvesting, turkey and waterfowl hunting, and other natural resources would be disproportionately high and adverse to Native American populations. Any potential impacts to Native American populations regarding affected wild rice stands should be evaluated, in part, in the context of subsistence gathering (e.g. nutritional), economics, and cultural/spiritual practices. In addition, EPA recommends considering potential impacts to Native American populations and other populations from workers at pipeline construction work camps (e.g. potential physical or sexual assaults, drug use, and increased burden on essential services) and consider mitigation measures to address these potential impacts. EPA also recommends that in addition to government-to-government consultation with federally recognized tribes, the State provide outreach opportunities for tribal members and indigenous

organizations to provide input on potential impacts and appropriate mitigation measures regarding a potential spill or other adverse impacts to Native American populations.

Wild Rice and Other Tribal Resources

Recommendations: EPA recommends the DEIS consider potential impacts to tribal treaty resources, such as tribal harvests of fish, wildlife, and plants, including wild rice, within Ceded Territories, as was undertaken in the *Wisconsin Department of Natural Resources' Draft Environmental Impact Statement for the Sandpiper and Line 3 Replacement Projects* (Feb. 2016). An analysis of potential pipeline leak or spill impacts to wild rice and other tribal resources in Ceded Territories should also include consideration of mitigation measures (including compensatory mitigation, as appropriate). EPA also recommends that the DEIS consult *Natural Wild Rice in Minnesota: A Wild Rice Study document submitted to the Minnesota Legislature by the Minnesota Department of Natural Resources February 15, 2008, Appendix B - Wild Rice Distribution and Abundance in Minnesota* (Appendix B) and other appropriate sources, including tribal governments, to identify wild rice locations that may potentially be impacted by a leak or spill. Appendix B states that the inventory of wild rice areas should be considered a work in progress and that further edits and review are needed. Other tribal resources in Ceded Territories that should be considered for impact analysis include, but are not limited to, traditional hunting areas for turkey and waterfowl and fish harvesting areas.

Cultural Resources, Data Sources Identified

Recommendation: EPA recommends the State consult with appropriate tribal governments and indigenous organizations to identify additional cultural resources (e.g., burial mounds, sacred sites) and Traditional Cultural Properties that may be impacted by the proposed project, including impacts from pipeline leaks or spills. For instance, the White Earth Tribal Government has designated Lower Rice Lake as a Traditional Cultural Property. In addition, *Geographic Information System (GIS) Mapping Analysis of Potential Community Vulnerabilities: The Proposed Sandpiper Pipeline in Northern Minnesota* (Feb. 2016) identifies 180 sites that serve as important cultural and archaeological resources within the pipeline buffer area. Additional information regarding the specific importance and details of each site is available through the White Earth Tribal Government, which holds the documentation on each site.

Rare and Unique Natural Resources

Recommendations: EPA recommends the DEIS consider whether any identified rare and unique natural resources qualify as an additional Pipeline and Hazardous Materials Safety Administration (PHMSA) High Consequence Area (HCA). *Natural Wild Rice in Minnesota: A Wild Rice Study, Appendix F, Stakeholder Comments* states the U.S. Fish and Wildlife Service has long recognized the ecological importance of natural wild rice stands and associated wetlands, such as the Rice Lake National Wildlife Refuge, for the purpose of managing these wetland habitats for the benefit of migrating and resident wildlife. More than 17 species of wildlife listed in the MNDNR's Comprehensive Wildlife Conservation Strategy as "species of greatest conservation need" use wild rice lakes as habitat for reproduction or foraging. EPA also recommends considering whether a potential pipeline spill could impact an HCA. Hazardous

liquid pipelines that pass through an HCA, or that pass near enough that a release could reach the area by flow over land or within a river, stream, lake, or other means, are assumed to have the potential to affect that area.

Large Volume Spill Modeling

Recommendation: EPA recommends the DEIS consider as one of the seven representative sites to be used for large volume spill modeling a location that could maximally expose wild rice resources to a pipeline spill.

Cumulative Effects

Recommendation: EPA recommends the DEIS consider the cumulative spill and other impacts to wild rice and other tribal resources in Ceded Territories from all current and future pipelines in the vicinity.

Greenhouse Gases and Climate Change

Recommendation: Given the potentially high volumes of greenhouse gas emissions associated with the proposed actions, EPA recommends including a discussion of potential measures to reduce emissions associated with the production, transport, and refining of the crude oil to be transported in the EIS.